

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 03-32062-DHW
Chapter 13

RONALD P. BEERS and
TERRY ANN BEERS,

Debtors.

**ORDER APPROVING IN PART
JANIE S. GILLILAND'S APPLICATION
FOR ADDITIONAL ATTORNEY'S FEES**

Before the court is the application of the debtors' attorney, Janie S. Gilliland, for the allowance of an additional \$2,000 in attorney fees.¹ On January 26, 2004 a hearing was held to consider the application. Present at the hearing were Janie S. Gilliland and Michael Fritz, attorney for the bankruptcy administrator.

FACTUAL BACKGROUND

The debtors filed their chapter 13 petition for relief on July 7, 2003. From the inception of the bankruptcy case Ms. Gilliland has represented the debtors in bankruptcy. The debtors' plan was filed on July 25, 2003 (Docket Entry # 9) and was confirmed by order dated October 1, 2003 (Docket Entry # 43).

Pursuant to 11 U.S.C. § 329 and Fed. R. Bankr. Proc. 2016(b), Ms. Gilliland filed a disclosure of compensation form (Docket Entry # 10) on July 25, 2003. Therein, counsel disclosed that she had been paid \$1,215 for her legal services in representing the debtors in bankruptcy and that no other balance was due.

On August 6, 2003 Ronald Beers filed an application to employ the law firm of Nix, Holtsford, Gilliland, Higgins, & Hitson, P.C. to represent the

¹ Ms. Gilliland makes this request under 11 U.S.C. § 329 and not under § 327(e). She has neither made application for employment under § 327(e) to represent the estate for a particular purpose nor has the court entered any order to that effect.

bankruptcy estate in a state court cause of action against Vestmark, Inc.; Community Communications, Inc.; Salvador Diaz-Verson, Jr.; Leonard J. Jagoda; Daniel S. Chambliss, *et al.* (Docket Entry # 16). On August 28, 2003 the court entered an order authorizing the law firm's employment under 11 U.S.C. 327(e) on a 40% contingency fee basis, plus reasonable expenses (Docket Entry #29).

On November 24, 2003 the Nix, Holtsford law firm filed a motion to approve a \$50,000 settlement of the state court cause of action and for approval of the firm's fees of \$18,000 (40% of the net settlement) and reimbursement of expenses in the amount of \$4,239.88 (Docket Entry #49). By order dated December 23, 2003 the court approved both the settlement and the law firm's application for fees and expenses (Docket Entry # 62).

On December 5, 2003 Ms. Gilliland filed the application *sub judice* seeking an additional \$2,000 in fees (Docket Entry # 53). The application has since been amended twice; first on December 19, 2003 (Docket Entry # 60) and then, on January 21, 2004 (Docket Entry #66). Cumulatively, counsel claims that she has expended 31.20 hours in representing the debtors at an hourly rate of \$150.² The application includes time spent representing the debtors both in connection with the state court lawsuit and in connection with the bankruptcy case.

LEGAL CONCLUSIONS

Congress has imposed on bankruptcy courts the responsibility of ensuring the reasonableness of professional fees charged by debtors' attorneys and by other professionals representing bankruptcy estates. 11 U.S.C. §§ 329 and 330. The role of the court is one of gatekeeper charged not only with assuring an orderly and efficient use of a debtor's assets but also of preventing abuse that might occur if the debtor, often in a weakened bargaining position, were allowed to hire and pay professionals without court supervision. *In re Production Associates, Ltd.*, 264 B.R. 180, 186 (Bankr. N.D. Ill. 2001) (citing *In re Pannebaker Custom Cabinet Corp.* 198 B.R. 453, 463 n.6 (Bankr. M.D. Pa. 1996)).

² 31.2 hours at \$150 per hour would result in a fee of \$4,680. Counsel is not requesting the full amount. Rather, she is requesting the original \$1,215 paid by the debtors plus \$2,000 embodied in this application — a total of \$3,215.

In the first amendment to the fee application (Docket Entry#60), counsel itemizes 9.5 hours for services rendered entirely in connection with the debtors' state court suit prior to the filing of the bankruptcy case on July 7, 2003. Time spent by counsel prepetition in connection with the state court action is simply not compensable here. Put another way, services rendered prepetition, other than services rendered in connection with or in contemplation of the bankruptcy case itself, are not compensable under § 329.³ Therefore, those itemized services rendered by counsel prior to the petition date, July 7, 2003, are not allowed.

Counsel's post petition services, as reflected in her itemization, may be divided into two types; those that are in connection with the bankruptcy case itself and those that are related to the state court lawsuit. The court finds that the services rendered under the following date entries were done in connection with the bankruptcy case and are compensable:

Monday, July 21, 2003	.3 hrs.
Tuesday, July 22, 2003	.3 hrs.
Wednesday, July 23, 2003	4.0 hrs.
Thursday, July 24, 2003	3.0 hrs.
Monday, July 28, 2003	1.5 hrs.
	.2 hrs.
Tuesday, July 29, 2003	.5 hrs.
Thursday, August 21, 2003	1.7 hrs.
Friday, August 22, 2003	.2 hrs.

These services total 11.7 hours. Hence, at the rate of \$150 per hour the total fee

³ 11 U.S.C. §329 provides:

(a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

11 U.S.C. § 329(a) (emphasis added). As stated in note 1, *supra*, Ms. Gilliland did not make application for employment under § 327(e) to represent the debtor in the state court lawsuit.

allowable is \$1,755.

As to the post petition services rendered by counsel relating to the state court litigation, the court is not convinced that such services are reasonable. As noted, the debtor employed, on a 40% contingency fee basis, the law firm of Nix, Holtsford, Gilliland, Higgins, & Hitson, P.C. for the particular purpose of prosecuting the state court cause of action. Recovery was made, and the law firm was paid the agreed contingency fee plus expenses. Therefore, the work done by Ms. Gilliland did not result in any savings for the estate. Rather, the work done by Ms. Gilliland on the state court cause of action aided the Nix, Holtsford firm by reducing the time it otherwise would have invested in the case. Had she not done this work, the firm was, nevertheless, bound to perform it, and the firm's contingency fee would have been the same, neither greater nor less. In sum, the work done by Ms. Gilliland on the state court cause of action was of no aid to the estate, and is therefore, noncompensable. To allow compensation for these services would in effect constitute double-dipping into the debtors' recovery.

CONCLUSION

Having concluded that the reasonable compensation for debtors' counsel is \$1,755 of which \$1,215 has been previously paid, it is

ORDERED that Janie S. Gilliland's application for additional attorney fees is GRANTED IN PART and that she is ALLOWED an additional fee of \$540.

Done this the 30th day of January, 2004.

/s/ Dwight H. Williams, Jr.
United States Bankruptcy Judge

c: Debtors

Janie S. Gilliland, Attorney for Debtors

Curtis C. Reding, Trustee

Teresa R. Jacobs, Bankruptcy Administrator